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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Petition of Pennsylvania Public Utility)
Commission for Expedited Waiver of the)
Ten Digit Dialing Requirement for 412)
(Pittsburgh) NPA Overlay Area Code Relief)

CC Docket No. 96-98

COMMENTS OF BELL ATLANTIC NYNEX MOBILE, INC.

Bell Atlantic NYNEX Mobile, Inc. (BANM),¹ pursuant to the Commission's February 25, 1997, Public Notice (DA 97-405), hereby submits its comments in support of the Pennsylvania Public Utilities Commission's February 18, 1997, "Petition for Expedited Waiver" of the ten-digit dialing requirement for its area code overlay relief plan for the Pittsburgh area.

The Pennsylvania PUC asks the Commission to waive the provision in 47 CFR § 52.19 which states that an overlay relief plan be conditioned on the presence of ten-digit dialing in the affected area. "The Commission may waive any provision of its rules or orders if good cause is shown. A showing of good cause requires the petitioner to demonstrate special circumstances that warrant deviation from the rules or order, and to show how such deviation would serve the

¹BANM is the managing general partner of Cellco Partnership, the majority owner and general partner of Pittsburgh SMSA Limited Partnership, which is licensed to provide cellular radiotelephone service in areas of Pennsylvania included in the 412 NPA relief plan.

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public interest."² The PUC has met the good cause standard, and has presented a compelling basis for waiving the ten-digit dialing rule.

1. Grant of the requested waiver will not undermine the purpose of Section 52.19. The ten-digit dialing provision was based on the Commission's assumption that CLECs and other competitive carriers would not have access to NXX codes in the old NPA, and thus their customers (unlike the incumbent LEC's customers) would have to be assigned numbers in the new NPA and be obligated to use ten-digit dialing. That assumption is, however, not correct in the Pittsburgh NPA. As noted by the PUC in its Petition, the record before it demonstrated that CLECs and other carriers other than the incumbent LEC already hold literally hundreds of NXX number blocks in the 412 NPA (each with approximately 10,000 individual numbers), affording them ample opportunity to offer 412 numbers to their customers. In addition, the PUC has demonstrated that number portability, which the Commission has required to be implemented in the Pittsburgh MSA next year, will remove any conceivable potential adverse impact on competing LECs. In contrast, CLECs supplied no facts demonstrating that the many 412 NPA NXX blocks they already hold are insufficient for new customers desiring such numbers until number portability is implemented.

2. Rigid application of Section 52.19 here would be counter to the public interest, while granting the waiver would serve the public interest. Denial of the

²U S West Communications, Inc., 1 CR 1261 (CCB 1995) (granting request for waiver); accord, Pacific Bell, 2 CR 403 (1996) (granting waiver); Southwestern Bell Mobile Systems, Inc., 1 CR 871 (1995) (granting waiver).

PUC's Petition could cause the PUC to adopt a geographic split of the 412 NPA, despite its finding that an all-services overlay relief plan was in the best interests of Pennsylvania residents and businesses. The PUC's decision was made after an extensive proceeding, which showed that an all-services overlay is economically efficient, treats all services equally, provides relief from exhaustion for the longest time, and alleviates the many costs to residents and businesses imposed by a split. But requiring ten-digit dialing may result in the PUC's having to engage in the very kind of geographic line-drawing that it decided was not in the public interest. As the PUC notes in its Petition, given the imminent exhaust situation in the 412 NPA, that process would be seriously disruptive. And, the resulting delay in area code relief could potentially prevent new customers from obtaining service.

The FCC has held that states and their public service commissions are in the best position to weigh the local considerations involved in selecting an NPA relief plan. In its Ameritech order,³ the Commission recognized that area code relief plans necessarily implicate numerous local issues and concerns that states are in the best position to assess, and thus held that the states should have the authority to develop and implement such plans. After enactment of the 1996 Act, the Commission decided to maintain Ameritech's approach of allowing the states to design their area code plans, finding that "[S]tates are uniquely situated to

³Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois, 10 FCC Rcd 4596 (1995).

determine what type of area code relief is best suited to local circumstances."⁴

While the FCC conditioned overlays on the availability of ten-digit dialing, the Pennsylvania PUC has shown why that condition is neither necessary nor appropriate, given the special facts involved in the 412 NPA situation, and why inflexibly imposing it here would undermine the public interest.

Grant of the requested waiver, by permitting the PUC to proceed with an all-services overlay, would also serve the public interest by avoiding the tremendous burdens and costs to cellular customers and carriers that would result from the alternative solution of dividing the 412 NPA into two area codes.⁵ Due to the way in which cellular phones are designed, it is necessary for them to be reprogrammed manually when a phone number changes. Thus, where an area code is split, all phones with numbers assigned to the new area code must be physically reprogrammed in order to function properly. Landline phones, in contrast, do not need to be reprogrammed at all; their phone numbers will be changed from the switch without any action by the customer.

⁴Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Second Report and Order, released August 8, 1996, at ¶ 283.

⁵The FCC already has extensive record evidence before it of the significant costs and burdens which area code splits impose on cellular carriers and their customers. See, e.g., Petition of Massachusetts Dep't of Public Utilities Regarding Area Code Relief Plan for Area Codes 508 and 617, NSD File No. 96-15, Comments of AT&T Corp., Southwestern Bell Mobile Systems, Inc., and BANM, filed November 5, 1996. The costs to BANM alone of splitting the Pittsburgh NPA would be in the millions of dollars.

This inherent technological difference translates into an enormous difference in the costs to cellular, as opposed to landline, carriers and customers when a geographic split is imposed. In other NPA relief proceedings before state commissions, BANM testified that it expected to spend at least \$40.00 to reprogram each cellular phone (a cost that was often below estimates of other cellular carriers), and that total reprogramming costs would involve tens of millions of dollars. This was grounded on BANM's extensive experience with reprogramming of cellular phones in areas where customers had to change their numbers due to a geographic split, including the 215/610 split in Pennsylvania, the 803/864 split in South Carolina, the 201/908 split in New Jersey, the 301/410 split in Maryland, and most recently, the 203/680 split in Connecticut. A split also imposes significant costs on cellular customers. Evidence submitted in these proceedings also calculated these costs to be in the millions of dollars.

Forcing one type of carrier and its customers to incur these burdens and expenses, while others do not, would create serious issues of discrimination in the assignment of numbering resources, issues which this Commission would then have to address and resolve. Litigation both in Pennsylvania and before the FCC as to whether it is lawful under the Communications Act and Commission policy to discriminate in this manner against cellular carriers might ensue, requiring even more Commission resources and further impairing implementation of NPA relief in Pittsburgh. Permitting the PUC to implement its overlay plan avoids these problems.

For these reasons, and those set forth in the Pennsylvania PUC's Petition, the Commission should promptly grant the Petition and allow the PUC to proceed with the all-services overlay for the 412 NPA.

Respectfully submitted,

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Dated: March 7, 1997

CERTIFICATE OF SERVICE

I hereby certify that I have this 7th day of March, 1997, caused a copy of the foregoing "Comments of Bell Atlantic NYNEX Mobile, Inc." to be sent by first-class mail, postage prepaid, to the following:

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